APPENDIX A

The following Utah statutes have been challenged in *Jane L. v. Bangerter.*

1. The prohibition of non-therapeutic abortions, codified at Utah Code Ann. §§ 76-7-301, -302, -314.

76-7-301. Definitions.

As used in this part:

(1) "Abortion" means the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum, and includes all procedures undertaken to kill a live unborn child and includes all procedures undertaken to produce a miscarriage. "Abortion" does not include removal of a dead unborn child.

(2) "Physician" means a medical doctor licensed to practice medicine and surgery under the Utah Medical Practice Act, a physician in the employment of the government of the United States who is similarly qualified, or an osteopathic physician licensed to practice medicine under the Utah Osteopathic Medicine Licensing Act.

(3) "Hospital" means a general hospital licensed by the Department of Health according to Chapter 21 of Title 26, and includes a clinic or other medical facility to the extent that such clinic or other medical facility provides equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health. It shall be the responsibility of the Department of Health to determine if such clinic or other medical facility so qualifies and to so certify.

76-7-302. Circumstances under which abortion authorized.

(1) An abortion may be performed in this state only by a physician licensed to practice medicine under the Utah Medical Practice Act or an osteopathic physician licensed to practice medicine under the Utah Osteopathic Medicine Licensing Act and, if performed 90 days or more after the commencement of the pregnancy as defined by competent medical practices, it shall be performed in a hospital.

(2) An abortion may be performed in this state only under the following circumstances:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or rape of a child, as defined by Sections 76-5-402 and 76-5-402.1, that was reported to a law enforcement agency prior to the abortion;

(c) the pregnancy is the result of incest, as defined by Subsection 76-5-406 (10) or Section 76-7-102, and the incident was reported to a law enforcement agency prior to the abortion;

(d) in the professional judgment of the pregnant woman's attending physician, to prevent grave damage to the pregnant woman's medical health; or

(e) in the professional judgment of the pregnant woman's attending physician, to prevent the birth of a child that would be born with grave defects.

(3) After 20 weeks gestational age, measured from the date of conception, an abortion may be performed only for those purposes and circumstances described in Subsections (2)(a), (d), and (e).

(4) The name of a victim reported pursuant to Subsection (b) or (c) is confidential and may not be revealed by law enforcement or any other party except upon approval of the victim. This subsection does not effect or supersede parental notification requirements otherwise provided by law.

76-7-314. Violations of abortion laws—Classifications.

(1) (a) Any person who intentionally performs an abortion other than authorized by this part is guilty of a felony of the third degree.

(b) Notwithstanding any other provision of law, a woman who seeks to have or obtains an abortion for herself is not criminally liable.

(2) A violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-311, or 76-7-312 is a felony of the third degree.

(3) A violation of any other provision of this part is a class A misdemeanor.

2. The spousal notification provision, codified at Utah Code Ann. § 76-7-304:

76-7-304. Considerations by physician—Notice to minor's parents or guardian or married woman's husband.

To enable the physician to exercise his best medical judgment, he shall:

(1) Consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including, but not limited to,

(a) her physical, emotional and psychological health and safety,

(b) her age,

(c) her familial situation

(2) Notify, if possible, the parents or guardian of the woman upon whom the abortion is to be performed, if she is a minor or the husband of the woman, if she is married.

3. The provision defining the standard of care for post-viability abortion, codified at Utah Code Ann. § 76-7-307, -308:

76-7-307. Medical procedure required to save life of unborn child.

If an abortion is performed when the unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgment of the physician will give the unborn child the best chance of survival. No medical procedure designed to kill or injure that unborn child may be used unless necessary, in the opinion of the woman's physician, to prevent grave damage to her medical health.

76-7-308. Medical skills required to preserve life of unborn child.

Consistent with the purpose of saving the life of the woman or preventing grave damage to the woman's medical health, the physician performing the abortion must use all of his medical skills to attempt to promote, preserve and maintain the life of any unborn child sufficiently developed to have any reasonable possibility of survival outside of the mother's womb.

4. A prohibition on the use of live unborn children for experimentation, codified at Utah Code Ann. § 76-7-310:

76-7-310. Experimentation with unborn children prohibited—Testing for genetic defects.

Live unborn children may not be used for experimentation, but when advisable, in the best medical judgment of the physician, may be tested for genetic defects.

5. The medical emergency exception, codified at Utah Code Ann. § 76-7-315:

76-7-315. Exceptions to certain requirements in serious medical emergency.

When due to a serious medical emergency, time does not permit compliance with Section 76-7-302, Subsection 76-7-304(2) or Subsection 76-7-305(2), the provisions of those sections do not apply.

APPENDIX B

SOME PENNSYLVANIA STATUTES PROTECTING MUTUALITY OF MARRIAGE

1. *Procreation and Adoption.*

23 Pa. Cons. Stat. Ann. § 2711 (1991) (consent of spouse required to adopt); *id.* consent of spouse required to release child for adoption); *id.* (notice to husband if married woman seeking to release child for adoption claims husband is not father); *id.* at § 3301 (adultery is ground for divorce).

2. *Presumption of Paternity and Support Responsibility.*

23 Pa. Cons. Stat. Ann. §§ 5102-5104, 4343 (1991) (presumption of legitimacy and husband's implied paternity of child born to married woman); *id.* at 4321 (married person liable for support of spouse).

3. *Privilege.*

42 Pa. Cons. Stat. Ann. §§ 5923, 5924 (1989 & Supp. 1991) (testimonial privileges for confidential communications between spouses and against adverse spousal testimony).

4. *Custody.*

23 Pa. Cons. Stat. Ann. § 5301 (1991) (policy favoring maintenance of relations with children by both ex-spouses following divorce).

5. *Miscellaneous.*

35 Pa. Cons. Stat. Ann. § 1111 (1991) (written consent of surviving spouse for post-mortem); 43 Pa. Cons. Stat. Ann. § 274 (1964) (written consent of wife necessary for married man to assign wages).

APPENDIX C

SOME UTAH STATUTES PROTECTING MUTUALITY IN MARRIAGE

1. *Procreation and Adoption.*

Utah Code Ann. § 76-5-402 (Supp. 1991) (marital rape); *id.* at § 76-7-103 (adultery); *id.* at § 76-7-104 (1990) (fornication); *id.* at § 76-7-204 (Supp. 1991) (surrogate parenthood agreements are prohibited); *id.* § 78-30-3 (1992) (neither spouse while living together may adopt a child without the consent of the other); *id.* at § 78-30-4.1 (neither spouse may relinquish a child born during marriage for adoption without the consent or termination of the parental rights of the other); *id.* at § 78-30-4.7(1) (d) & (e) (spousal notification is required when a married person files a petition to adopt, and when a married man is named as the adoptee in a petition for adoption); Utah Code Ann. § 62A-6-110 (1989) (spousal notification is required when a petition to sterilize a handicapped person is filed).

2. *Presumption of Legitimacy, Paternity, and Support.*

Utah Code Ann. § 30-1-17.2 (Supp. 1991) (children born during the marriage are deemed the legitimate children of both spouses; Utah Code Ann. § 76-7-201 (1990) (criminal nonsupport); §§ 78-45-3, -4 (1992) (both spouses are liable for the support of each other and of their children); Utah Code Ann. § 30-2-9 (1989) (both spouses are liable for family expenses).

3. *Privilege.* Utah Code Ann. § 77-1-6(2)(d) (1990) (neither spouse can be forced to testify against the other); Utah Code Ann. § 78-24-8 (1992) (with limited exceptions, neither can give testimony about spousal communications without the consent of the other).

4. *Custody.* Utah Code Ann. §§ 30-3-10.-1 to -10.3 (Supp. 1991) (joint custody authorization).

5. *Miscellaneous.*

Utah Code Ann. § 30-2-10 (1989) (neither spouse can remove the other or their children from the homestead without the consent of the other); Utah Code Ann. § 78-23-3(6) (1992) (the wife's separate property may not be designated the family homestead without her consent).